FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

2014 MAR 21 P 1:44

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

CENTRAL SOURCE LLC
P.O. Box 105283
Atlanta, Georgia 30348,

Plaintiff,

v.

annualcreditfreport.com
annualcre4ditreport.com
annualcr5editreport.com
annualc4reditreport.com
annualcreditrwport.com
nanualcreditreport.com
abnualcreditreport.com
annujalcreditreport.com
annualxreditreport.com and
annualcrefitreport.com,

Defendants.

Civil Action No. 1:14cv303
LOG/TRJ

COMPLAINT

Plaintiff Central Source LLC, by counsel, alleges as follows for its *in rem* Complaint against Defendants:

NATURE OF THE SUIT

1. This is an *in rem* action for cybersquatting under the Federal Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d). Plaintiff's invaluable rights in the distinctive AnnualCreditReport mark have been deliberately infringed through the bad faith registration and use of the Defendant domain names, which domain names are confusingly similar to the AnnualCreditReport mark.

PARTIES

2. Central Source LLC ("Central Source") is a corporation organized and existing under the laws of Delaware with a principal business address of P.O. Box 105283, Atlanta, Georgia, 30348.

3. annualcreditfreport.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by "Above.com Domain Privacy." A copy of the domain name registration record for annualcreditfreport.com is attached as Exhibit A.

4. annualcre4ditreport.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by "Above.com Domain Privacy." A copy of the domain name registration record for annualcre4ditreport.com is attached as Exhibit B.

5. annualcr5editreport.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by "Above.com Domain Privacy." A copy of the domain name registration record for annualcr5editreport.com is attached as Exhibit C.

6. annualc4reditreport.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by "Above.com Domain Privacy." A copy of the domain name registration record for annualc4reditreport.com is attached as Exhibit D.

7. annualcreditrwport.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by "Above.com Domain

Privacy." A copy of the domain name registration record for annualcreditrwport.com is attached as Exhibit E.

8. nanualcreditreport.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by "Above.com Domain Privacy." A copy of the domain name registration record for nanualcreditreport.com is attached as Exhibit F.

9. abnualcreditreport.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by "Above.com Domain Privacy." A copy of the domain name registration record for abnualcreditreport.com is attached as Exhibit G.

10. annujalcreditreport.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by "Above.com Domain Privacy." A copy of the domain name registration record for annujalcreditreport.com is attached as Exhibit H.

11. annualxreditreport.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by "Above.com Domain Privacy." A copy of the domain name registration record for annualxreditreport.com is attached as Exhibit I.

12. annualcrefitreport.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by "Above.com Domain Privacy." A copy of the domain name registration record for annualcrefitreport.com is attached as Exhibit J.

13. Upon information and belief, "Above.com Domain Privacy" provides a service that replaces a domain name owner's contact information with "Above.com Domain Privacy" as the domain name registrant and thereby conceals the identity of the true owner(s) of the domain name.

14. Upon information and belief, the Defendant domain names were registered by the same person or entity and/or are under the control of the same person or entity.

JURISDICTION, VENUE AND JOINDER

15. This is a civil action for federal cybersquatting in violation of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d). This Court has *in rem* jurisdiction over the aforementioned domain names pursuant to 15 U.S.C. § 1125(d)(2)(A).

16. This Court has original jurisdiction under 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a).

17. Venue is proper in this District pursuant to 15 U.S.C. § 1125(d)(2)(C) in that the .COM domain name registry, VeriSign, Inc., is situated in this judicial district and the Defendant domain names are all .COM domain names.

18. The Court is unable to obtain *in personam* jurisdiction over the true registrant(s) of the Defendant domain names because "Above.com Domain Privacy" is listed as the registrant of the domain names and the true identity of the owner(s) cannot be determined because "Above.com Domain Privacy" has refused to disclose the identity of the owner(s).

19. Pursuant to 15 U.S.C. § 1125(d)(2)(A)(i)(II)(aa), Central Source has given notice of the violations of Central Source's rights and the impending filing of this action to the domain name registrant(s) at the postal and e-mail addresses provided for the registrant(s) in the domain name registration records for the Defendant domain names.

20. Joinder of the Defendant domain names is proper under Fed. R. Civ. P. 20(a)(2) in that the *in rem* cybersquatting claim set forth herein arises out of the same series of transactions and the same question of law is common to all of the Defendant domain names.

21. The Defendant domain names were all registered through the ICANN accredited registrar ABOVE.COM, Pty. Ltd., the registration records for Defendant domain names all list "Above.com Domain Privacy" as the registrant, and the Defendant domain names are all configured in a similar manner to display webpages containing pay-per-click links related to AnnualCreditReport or to redirect visitors to third-party websites for sales solicitations related to AnnualCreditReport.

CENTRAL SOURCE'S RIGHTS

22. Central Source was created in 2004 to provide consumers with a secure means to request and obtain a free credit report once every 12 months in accordance with the Fair and Accurate Credit Transactions Act. 15 U.S.C. § 1681j.

23. Central Source provides this service to consumers through a website and service available at www.AnnualCreditReport.com, and AnnualCreditReport is the only service/site authorized by the U.S. Federal Trade Commission and the Consumer Financial Protection Bureau to provide this service.

24. Central Source registered the AnnualCreditReport.com domain name on June, 25 2004.

25. Over the course of June and July of 2004, Central Source registered a large number of additional related domain names and now owns over 250 domain names representing typographical errors of AnnualCreditReport as a defensive measure intended to protect

consumers by limiting cybersquatting of domain name registrations related to AnnualCreditReport.

26. Central Source began promoting the AnnualCreditReport mark and website in a press release issued on November 23, 2004. This promotion resulted in several major media organizations nationwide publishing stories that referenced the AnnualCreditReport mark and the AnnualCreditReport.com website address. These organizations included *The Chicago Tribune*, *The Kansas City Star*, *The New York Times*, *The Sacramento Bee*, *The San Francisco Chronicle*, *The Star-Ledger, USA TODAY*, and *The Washington Post.*

27. As a result of Central Source's promotion of the AnnualCreditReport mark and AnnualCreditReport.com domain name and the corresponding media coverage, consumers immediately associated the AnnualCreditReport mark and the AnnualCreditReport.com domain name with Credit Source.

28. The AnnualCreditReport service was launched for public use on November 30, 2004.

29. Since opening for public use, AnnualCreditReport has received over 500,000,000 visits to AnnualCreditReport.com through September 30, 2013.

30. The U.S. Federal Trade Commission has engaged in a wide ranging public service campaign promoting AnnualCreditReport through informational websites, television and Internet commercials, and audio public service announcements.

31. The Federal Trade Commission has also previously pursued unauthorized Internet uses of AnnualCreditReport and typographical variations of AnnualCreditReport.

32. The Credit Card Accountability Responsibility and Disclosure Act (the "CARD Act") requires certain mandatory references to AnnualCreditReport.com whenever an advertisement or website offers a free credit report.

33. Pursuant to 15 U.S.C. § 1681j(g):

> [A]ny advertisement for a free credit report in any medium shall prominently disclose in such advertisement that free credit reports are available under Federal law at: "AnnualCreditReport.com" (or such other source as may be authorized under Federal law).

34. Pursuant to 12 C.F.R. § 1022.138(b):

> (3) All advertisements for free credit reports in print shall include the following disclosure in the form specified below and in close proximity to the first mention of a free credit report. The first line of the disclosure shall be centered and contain only the following language: "THIS NOTICE IS REQUIRED BY LAW." Immediately below the first line of the disclosure the following language shall appear: "You have the right to a free credit report from AnnualCreditReport.com or (877) 322-8228, the ONLY authorized source under Federal law." ...
>
> (4) Web sites. Any Web site offering free credit reports must display the disclosure set forth in paragraphs (b)(4)(i), (ii), and (v) of this section on each page that mentions a free credit report and on each page of the ordering process. (i) The first element of the disclosure shall be a header that is centered and shall consist of the following text: "THIS NOTICE IS REQUIRED BY LAW. ... ; (ii) The second element of the disclosure shall appear below the header required by paragraph (b)(4)(i) and shall consist of the following text: "You have the right to a free credit report from AnnualCreditReport.com or (877) 322-8228, the ONLY authorized source under Federal law." The reference to AnnualCreditReport.com shall be an operational hyperlink to the centralized source, underlined, and in the same color as the hyperlink to consumerfinance.gov/learnmore required in § 1022.138(b)(4)(i); (v) The third element of the disclosure shall appear below the text required by paragraph (b)(4)(ii) and shall be an operational hyperlink to AnnualCreditReport.com that appears as a centered button containing the following language: "Take me to the authorized source."

35. The mandatory disclosures required by federal law under 15 U.S.C. § 1681j(g) and 12 C.F.R. § 1022.138 have resulted in millions of references to AnnualCreditReport being presented to consumers.

36. Through promotion of AnnualCreditReport by Central Source, the Federal Trade Commission, and third parties that are statutorily required identify AnnualCreditReport, the AnnualCreditReport mark has become famous and/or distinctive throughout the United States in connection with Central Source's services.

37. The Defendant domain names represent unauthorized colorable imitations of the AnnualCreditReport mark, which further demonstrates that the AnnualCreditReport mark has acquired distinctiveness and was famous and/or distinctive prior to the time of registration of the Defendant domain names.

38. Consumers have come to distinguish and recognize the legitimacy of Central Source's services as a result of the use and widespread promotion of the AnnualCreditReport mark. The AnnualCreditReport mark is entitled to common law trademark rights.

39. The AnnualCreditReport mark is also registered on the Principal Trademark Register of the U.S. Patent and Trademark Office under registration number 4152650. *See* Exhibit K.

40. Central Source's federal registration for the AnnualCreditReport mark is *prima facie* evidence of the validity of the mark, of Central Source's ownership of the mark, and of Central Source's exclusive right to use the mark in U.S. commerce.

UNLAWFUL USE OF THE DOMAIN NAMES

41. Central Source has engaged in significant efforts to protect consumers by *inter alia* defensively registering domain names that represent typographical variations of AnnualCreditReport and by pursuing the disabling of websites and the transfer of domain names that are being used to confuse and mislead consumers.

42. The Defendant domain names represent typographical errors of AnnualCreditReport. The registration and use of the Defendant domain names reflects a type of cybersquatting known as "typosquatting."

43. Upon information and belief, the Defendant domain names were registered for the purpose of obtaining Internet visitors when such visitors make a typographical error on their keyboard when attempting to reach AnnualCreditReport.com by typing "AnnualCreditReport."

44. The Defendant domain names are configured to display pay-per-click advertisements or to redirect visitors to third-party websites for sales solicitations—when the visitors were actually seeking the AnnualCreditReport service provided by Central Source through AnnualCreditReport.com.

45. Upon information and belief, the registrant(s) of the Defendant domain names receive compensation when Internet visitors, who were attempting to reach AnnualCreditReport.com, click on a link provided by a Defendant domain name to a third-party website and/or when the Internet visitors are automatically redirected by a Defendant domain name to a third-party website for a sales solicitation.

46. The use of the AnnualCreditReport mark within the Defendant domain names and/or associated websites is without authorization from Central Source.

47. Upon information and belief, the Defendant domain names do not and cannot reflect the legal name of the registrant(s) of the domain names.

48. Upon information and belief, the registrant(s) of the Defendant domain names has not engaged in bona fide noncommercial or fair use of the AnnualCreditReport mark in a website accessible under the domain names.

49. The websites displayed by the registrant(s) of the Defendant domain names are likely to be confused with Central Source's legitimate online location at AnnualCreditReport.com and actual consumer confusion is occurring in the marketplace.

50. Upon information and belief, the registrant(s) of the Defendant domain names registered the domain names with intent to divert consumers away from Central Source's online location AnnualCreditReport.com, for commercial gain, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the Defendant domain names and the sites displayed through use of the Defendant domain names.

51. Upon information and belief, the registrant(s) of the Defendant domain names provided material and misleading false contact information when applying for and maintaining the registration of the Defendant domain names in that "Above.com Domain Privacy" is identified as the registrant of the Defendant domain names but is not the true owner of the domain names.

52. Upon information and belief, the Defendant domain names are being used to display websites that do not comply with the mandatory disclosure provisions of 15 U.S.C. § 1681j(g) and 12 C.F.R. § 1022.138.

53. Central Source sent cease and desist letters to the registrant(s) of the Defendant domain names, through the contact information provided in the domain name registration records, requesting that the domain names be disabled and transferred to Central Source.

54. Central Source received a response to such correspondence from a representative of "Above.com Domain Privacy" confirming that the correspondence would reach the true owner(s) of the domain names.

55. “Above.com Domain Privacy” has refused to reveal the identity of the true owners of the Defendant domain names or to otherwise cooperate in disabling the Defendant domain names.

56. Central Source has received no response to its correspondence from the true owner(s) of the Defendant domain names.

CLAIM FOR RELIEF

Violation of the Federal Anti-Cybersquatting Consumer Protection Act

57. Central Source repeats and realleges each and every allegation set forth in the foregoing paragraphs 1-56, as though fully set forth herein.

58. Central Source’s federally registered AnnualCreditReport mark is famous and/or distinctive and was famous and/or distinctive prior to the time of registration of the Defendant domain names.

59. The aforesaid acts by the registrant(s) of the Defendant domain names constitute registration, maintenance, or use of domain names that are confusingly similar to Central Source’s AnnualCreditReport mark, with bad faith intent to profit therefrom.

60. Central Source has repeatedly requested that Above.com Domain Privacy disclose the identities of the true owner(s) of the Defendant domain names and Above.com Domain Privacy has steadfastly refused to comply with such requests.

61. In light of Above.com Domain Privacy’s concealment of the identities of the true owners(s) of the Defendant domain names, Central Source is not able to obtain *in personam* jurisdiction over the registrant(s) of the Defendant domain names or any other person who would have been a defendant in a civil action under 15 U.S.C. § 1125(d)(1)(A).

62. Central Source, despite its due diligence, has been unable to find a person who would have been a defendant in a civil action under 15 U.S.C. § 1125(d)(1)(A).

63. The aforesaid acts by the registrant(s) of the domain names constitute unlawful cyberpiracy in violation of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1).

64. The aforesaid acts have caused, and are causing, great and irreparable harm to Central Source and the public. The harm to Central Source includes harm to the value and goodwill associated with the AnnualCreditReport mark that money cannot compensate. Unless permanently restrained and enjoined by this Court, said irreparable harm will continue. Thus, pursuant to 15 U.S.C. § 1125(d)(2)(D)(i), Central Source is entitled to an order transferring the Defendant domain name registrations to Central Source.

PRAYER FOR RELIEF

WHEREFORE, Central Source respectfully requests of this Court:

1. That judgment be entered in favor of Central Source on its claim of cybersquatting.

2. That the Court order the Defendant domain names be transferred to Central Source.

3. That any other domain names registered by the registrant(s) of the Defendant domain names that resemble or include the AnnualCreditReport mark be transferred to Central Source.

4. That the Court order an award of costs and reasonable attorney's fees incurred by Central Source in connection with this action pursuant to 15 U.S.C. § 1117(a); and

5. That the Court order an award to Central Source of such other and further relief as the Court may deem just and proper.

Dated: March 21, 2014 By: ______________________

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